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SIDLEY AUSTIN LLP			JARRETT, SCOTT L	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/878,707	<b>Applicant(s)</b> RYAN ET AL.	
	<b>Examiner</b> Scott L. Jarrett	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 06 November 2007.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1 and 3-19 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1 and 3-19 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some \*    c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Non-Final Office Action is in response to Applicant's request for continued examination under 37 CFR 1.114 filed September 24, 2007 and the supplemental amendment filed November 6, 2007. Applicant's amendments amended claims 1 and 3-19 and canceled claims 2 and 20-33. Currently claims 1 and 3-19 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 24, 2007 has been entered.

#### ***Response to Amendment***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

It is noted that the Applicant's did not challenge the official cited fact(s) in the previous office action(s) therefore those fact(s) as presented are herein after considered prior art. Specifically it has been established that it was old and well known in the art at the time of the invention to determining if there is enough demand by comparing

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demand to some threshold (minimum number, required level, etc.) and then scheduling a market (auction, transaction, exchange, etc.) if and when the demand warrants it (critical mass).

***Response to Arguments***

4. Applicant's arguments with respect to claims 1 and 3-19 have been considered but are moot in view of the new ground(s) of rejection.

***Title***

5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: System and Method for Scheduling Micro Markets Between Dealers and Suppliers When There Is Sufficient Demand and Supply.

***Double Patenting***

6. Claims 1 and 11 of this application conflict with claims 20, 25, 30, 31, 41, 43 and 45 respectively, of Application No. 11/489,330. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

7. Claims 1 and 11 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 20, 25, 30, 31, 41, 43 and 4, respectively, of copending Application No. 11/489,330. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1 and 3-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 1 and 11, Claims 1 and 11 recite the limitation "determine the amount of the products in **each** product class" in Claims 1 and 11 respectively. There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "determine the amount of the products in the dealer's product classes" for the purposes of examination.

Appropriate correction required.

Further regarding Claims 1 and 11, Claims 1 and 11 recite the limitation "dealer demand is greater than **the** threshold value" in Claims 1 and 11 respectively. There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read ""dealer demand is greater than a threshold value" for the purposes of examination.

Appropriate correction required.

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Regarding Claim 4, Claim recites the limitation "offering **the units** of said supply of products" in Claims 1. There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read ""offering **units** of said supply of products" for the purposes of examination.

Appropriate correction required.

**Claim Rejections - 35 USC § 103**

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1 and 3-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over PriceDrive.com features, capabilities and/or characteristics of PriceDrive being disclosed in at least the following references:

- I. Etensity Launches Innovative Wireless Solution for B2B Auto Exchange (August, 2000), herein after reference A;
- II. PriceDrive.com Web Pages (August/October 2000), herein after reference B;
- III. PriceDrive.com Web Pages (April, 2001), herein after reference C;
- IV. PriceDrive.com Web Pages (May, 2001), herein after reference D; and
- V. Hall et al., U.S. Patent Publication No. 2002/0194051, herein after reference '051

and further in view of Pallakoff, U.S. Patent No. 6,269,343.

Regarding Claims 1 and 11 PriceDrive a system and method for creating a demand-based market (auction, trade, transaction, buy/sell, exchange, etc.) for productions sold/purchased by a plurality of dealers/suppliers comprising ("The invention may optionally create *online trading communities*, provide real-time market information, as well as *access to a broader market of prospective buyers and sellers who are in need of the vehicles.*



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The invention may also allow *dealers to provide each other with any product for which they have a desire for, and notify each other if the product becomes available.*”, reference: ‘051: emphasis added, Paragraph 008; Abstract, Paragraphs 0007-0008, 0032, 0034, 0042-0043):

- establishing in inventory profile for each of the plurality of dealers of the products, the inventory profile including an optimal stocking level based on a typical sale rate for that dealer for each of the products (reference: ‘051: Claims 24-25, 58; Paragraph 0048; Figure 2, Elements 208, 220; Figure 4, Elements 406, 408; Figure 8, Elements 812, 814; Figures 6, 10-12; reference B: Paragraphs 1-2, Page 7; reference C: Page 4; reference D: Last Paragraph, Page 2; Paragraphs 1-2, Page 2; Paragraph 1, Page 3; Paragraph 1, Page 5; Paragraph 1, Last Paragraph, Page 10; Paragraph 1, Page 15; Pages 23-24);

- collecting inventory information on a recurring basis for each of a plurality of the dealers to determine the amount of the products in the dealer’s product classes (reference: ‘051: Claims 3, 21-22; Paragraphs 0048-0049, 0055, 0062, 0087, 0090, 0095; Figure 7; reference B: Paragraphs 1-2,10-11, Page 7; reference C: Paragraphs 2, 4, Page 1; Page 4; Bullet 4, Page 6; reference D: Paragraph 1, Page 3; Paragraph 1, Page 5)

“The method of the invention comprises selecting the data from the dealers, processing the data, and *providing the processed data to the dealers* while maintaining confidentiality of individual data of each automotive dealer. The selecting of the data may include *collecting data indicating*, for example,

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*which vehicles are in demand.* The data for vehicles may include a vehicle's make, a number of a vehicle's make a dealer has in stock, a vehicle identification number, a vehicle's year, a vehicle's model, a vehicle's body style, a vehicle's color, a vehicle's mileage, a vehicle's retail asking price, a vehicle's transactions cost, a vehicle's reconditioning cost, a vehicle's age, a vehicle's selling price, a vehicle's gross profit, *an acquisition need of a vehicle, a selling need of a vehicle*, a vehicle's image, a vehicle's *turnover rate*, or an *aggregate* of any of the above-listed data.”, emphasis added, reference '051: Paragraph 0007

For example, in the *used vehicles business, sharing vehicle data with other dealers provides each dealer the ability to identify which dealers in a region have an immediate need for vehicles* that they want to sell right away. For auto dealers, the ability to *find and purchase the most desirable and available used vehicles* as well as locate prospective retail customers in their region for specific vehicles give them a competitive financial advantage., emphasis added, reference '051: Paragraph 0034;

- determining, after collecting, current individual deal demand of each product class based on the dealer's inventory information and profile (reference: '051: Paragraphs 0048-0052; 055, 0062, 0087, 0094; Figures Figures 2, 10, 18, 17a-17b; Claims 24-25; reference C: Page 3; reference D: Last Paragraph, Page 2; Paragraphs 1-2, Page 2; Paragraph 1, Page 3; Paragraph 1, Page 5; Paragraph 1, Last Paragraph, Page 10; Paragraph 1, Page 15; Pages 23-24);

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“The Recommendation 230 is a *number of vehicles 232* the web site *recommends the dealer to increase or decrease its retail inventory by*. This number of vehicles 232 is based on a *dealer-specific Target Day Supply 264* (the dealer-determined number of days that it should take to sell the entire inventory given its historical sales data). In particular, the system *recommends the dealer to buy or sell its retail inventory by the number of vehicles 232 in order to meet its predetermined target retail inventory which matches the Target Day Supply 264*. The number of vehicles 232 is determined by subtracting the number of Retail 224 vehicles from the predetermined target retail inventory to achieve the Target Day Supply 264. “ emphasis added, Paragraph 0048);

- iteratively determining if a (micro) market exists for each of the product classes

by:

- determining if (sufficient) demand exists for a (micro) market of a product class

by aggregating the current individual dealer demand for each product class (level,

amount, minimum, volume, price, etc.; reference D: Paragraph 4, Page 1; reference:

'051: Claims 5, 6, 42, 43; Paragraphs 0007-0034, 0042-0044, 0051, 0088, 0090-0091,

0095);

“5. A method for networking dealers managing systems, comprising: *pooling data* from the dealers managing systems to produce *aggregate data* while maintaining confidentiality of individual data of each dealer; and *sharing the aggregate data among the dealers*; wherein the *dealers use the aggregate data* to benchmark the dealers' market situations and to better understand the dealers' marketplace.”, emphasis added, Claim 5);

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- when there is sufficient demand (e.g. demand greater than zero) determining if (sufficient) supply exists within each product class to create a market by identifying the potential product class supply available from a plurality of suppliers (reference '051: Paragraphs 0087, 0094-0095; Figures 7, 8, 17B) and summing the amount of products in the product classes that are available as supply and determining if the supply is greater than a threshold value for said product class (reference: '051: 0042-0043, 0048-0049, 0057-0058, 0061; Figures 13, 17a; reference D: Paragraph 3, Page 3; Paragraph 1, Page 4);

- when dealer product class demand and supplier product class supply are sufficient creating a demand driven (micro) market by scheduling the market and notifying dealers and suppliers, who have product class demand/supply, that a market has been scheduled (reference: '051: Paragraphs 0008, 0034, 0050-0051, 0095-0096; Figure 3, Element 320; reference B: Paragraph 4, Page 8; reference C: Paragraph 2, Page 1; reference D: Paragraph 1, Page 3; Paragraph 1, Page 4; Paragraph 1, Page 5; Paragraph 5, Page 11; Page 24); and

“The number of Hits 1716 indicates the total number of matching vehicles in the web site's database, including the dealership's vehicles. Moreover, the web site provides the dealership with information such as the *other dealers' needs and their locations, etc., in order for the dealership to complete its transaction.* The web site can also have the *dealership's Buy List* linked to a WAP device so the dealership *will always know when a vehicle it needs is available.*”, emphasis added, Paragraph 0095

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- notifying (altering, communicating, messaging, calling, pushing, etc.) the dealers (buyers) having current individual demand for the product and the (potential) suppliers of the scheduled market (transaction, sale, auction, etc.; reference: '051: Claims 12, 33, 49, 60; Paragraphs 0041, 0095-0096; reference B: Paragraph 3, Page 2; reference C: Bullet 6, Page 6; reference D: Paragraph 1, Page 3; Paragraph 7, Page 11).

PriceDrive teaches a market system and method wherein the products including classes (types, categories, etc.) of products (cars, trucks, motorcycles, used, new, etc.; (reference C: Page 6; reference D: Paragraph 1, Page 2; Paragraph 1, Page 5; reference '051: Paragraphs 0008, 0034, 0057, 0090).

PriceDrive teaches a market method and system wherein the method steps are repeated on a periodic (scheduled, recurring, regular, etc.) basis (reference B: Paragraphs 1-2, Page 7; reference C: Bullet 4, Page 6; reference '051: Paragraphs 0042-0043).

PriceDrive teaches further teach the market system and method is conducted over a network (Figure 1; Paragraphs 0004-0006, 0035-0037).



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**Retail Sales Trends**

492      494      406      408

Make* [M12]	Model* [M17]	Metrics [M2]	Qty Sold	Qty Sold	Qty Sold	Qty Sold	Current Stock
			Last 8 mo	Last 90 days	Last 60 days	Last 30 days	
	828		72	50	38	29	10
	PROTEGE-4 CYL		28	17	15	7	6
MAZDA	MPV-V6		21	16	11	6	1
	MILLENNIA-V6		17	11	6	7	3
	B SERIES PICKUP		7	3	3	3	1
FORD	CONTOUR-4 CYL		5	4	2	2	0
JEEP	GRAND CHEROKEE-6 CYL		5	2	2	1	1
CHEVROLET	MALIBU-V6		3	2	2	0	0
MERCURY	SABLE-V6		3	2	2	1	0
TOYOTA	CAMRY		3	1	1	1	0
ACURA	TL-6 CYL		2	2	2	2	0
FORD	TAURUS-V6		2	1	1	0	0
FORD TRUCK	EXPLORER-V8		2	1	0	0	0
MAZDA	MX-5 MIATA-4 CYL		2	1	1	1	1
MITSUBISHI	GALANT-4 CYL		2	2	2	0	0
NISSAN/DATSUN	SENTRA-4 CYL		2	2	1	0	0
TOYOTA	COROLLA-3 CYL		2	1	1	0	0
BUICK	REGAL CUSTOM- V6		1	0	0	0	0
CHEVROLET	LUMINA-V6		1	0	0	0	0
CHEVROLET TRUCK	S10 PICKUP-V6		1	1	1	1	0
CHRYSLER	SOON-V6		1	0	0	0	0
	CIRRUS		1	1	0	0	0
HONDA	ACCORD		1	0	0	0	0
	PASSPORT-V6		1	1	0	0	0
HYUNDAI	TIBURON-4 CYL		1	0	0	0	0
JEEP	GRAND CHEROKEE-V6		1	1	0	0	0
MAZDA	B4000 PICKUP-V6		1	0	0	0	0
	TRIBUTE		1	1	1	0	0
MERCURY	MYSTIQUE-4 CYL		1	0	0	0	0
MITSUBISHI	MIRAGE-4 CYL		1	0	0	0	0
NISSAN/DATSUN	MAXIMA-V6		1	0	0	0	2

Figure 2: '051, Figure 4

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Vehicles to Watch

614 616 618 620 612 602 (Rows: 10 Columns: 4) 624 626

Stock Number	Year	Make	Model	Warning	Metrics	Days in Stock	Avg Days in Stock	Avg Gross Profit	Avg ROI
A14591	1999	VOLKSWAGEN	NEW BEETLE-4 CYL.	No History Available	604	17	N/A	N/A	N/A
A14414	1998	SUBARU	FORESTER-4 CYL.	No History Available		18	N/A	N/A	N/A
P3292	2000	FORD	FOCUS-4 CYL.	No History Available		0	N/A	N/A	N/A
H3279	1999	MAZDA	B2500 PICKUP-4 CYL.	No History Available		5	N/A	N/A	N/A
H3217B	1993	FORD	ESCORT	No History Available		1	N/A	N/A	N/A
H3296	1998	NISSAN/DATSUN	MAXIMA-V8	Below Minimum ROI	606	0	44	\$ 355	19%
H3289	1998	NISSAN/DATSUN	MAXIMA-V8	Below Minimum ROI		0	44	\$ 355	19%
P3241	2000	MAZDA	MX-5 MIATA-4 CYL.	Add Description   Over Age - Wholesale	608 610	64	33	N/A	31%
H3283	1997	MAZDA	MX-5 MIATA-4 CYL.	Below Minimum ROI		6	33	N/A	31%
P3245	1999	FORD	CONTOUR-4 CYL.	Add Description   Over Age - Wholesale		50	18	\$ 1,548	N/A

Figure 3: '051, Figure 6



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To Do List Daily Reports Dealer Inventory Appraisal Activity Retail Showroom Wholesale Center Buy List

**Welcome to Pricedrive**

**Consider for Wholesale Center**

802 Stock	804 Year	806 Make	808 Model	810 Mileage	812 Current Days in Stock	814 Avg. Gross Profit	816 Avg. ROI %	818 Warning	820 Move to WC?
H3217B	1993	FORD	ESCORT		1	N/A	N/A	No History Available	<input type="checkbox"/>
P3292	2000	FORD	FOCUS-4 CYL.	4900	0	N/A	N/A	No History Available	<input type="checkbox"/>
H3298	1998	NISSAN/DATSUN	MAXIMA-V6	35986	0	\$355	18%	Below Minimum ROI	<input type="checkbox"/>
H3299	1998	NISSAN/DATSUN	MAXIMA-V6	30910	0	\$355	18%	Below Minimum ROI	<input type="checkbox"/>
H3279	1999	MAZDA	B2500 PICKUP-4 CYL.	31762	6	N/A	N/A	No History Available	<input type="checkbox"/>
H3283	1997	MAZDA	MX-6 MIATA-4 CYL.	34923	8	N/A	31%	Below Minimum ROI	<input type="checkbox"/>
A14414	1998	SUBARU	FORESTER- 4 CYL.	52403	18	N/A	N/A	No History Available	<input type="checkbox"/>
A14591	1989	VOLKSWAGEN	NEW BEETLE-4 CYL.	17806	17	N/A	N/A	No History Available	<input type="checkbox"/>

Total vehicles = 8

Save Print Close

800

Figure 4: '051, Figure 8

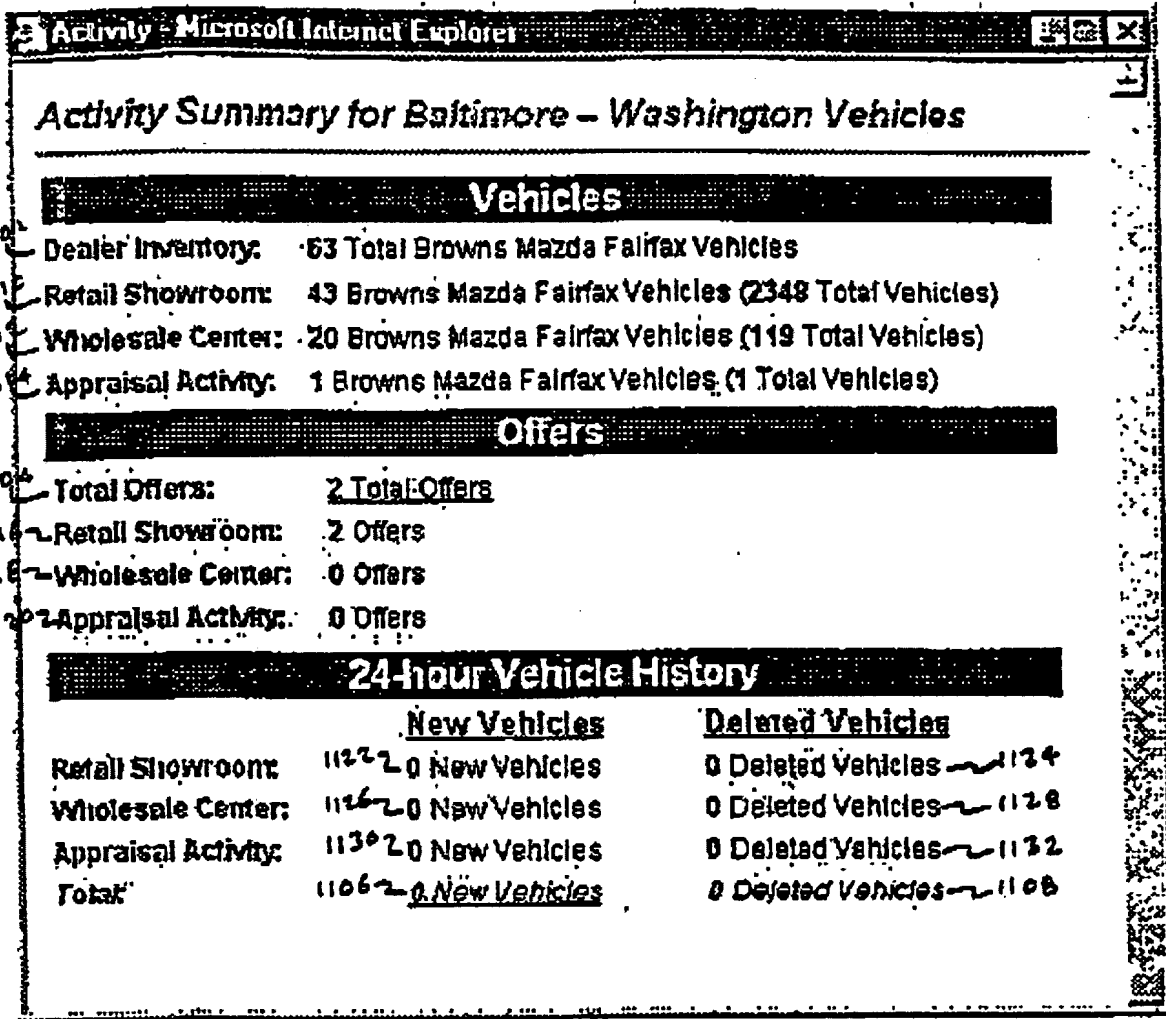


Figure 5: '051, Figure 11

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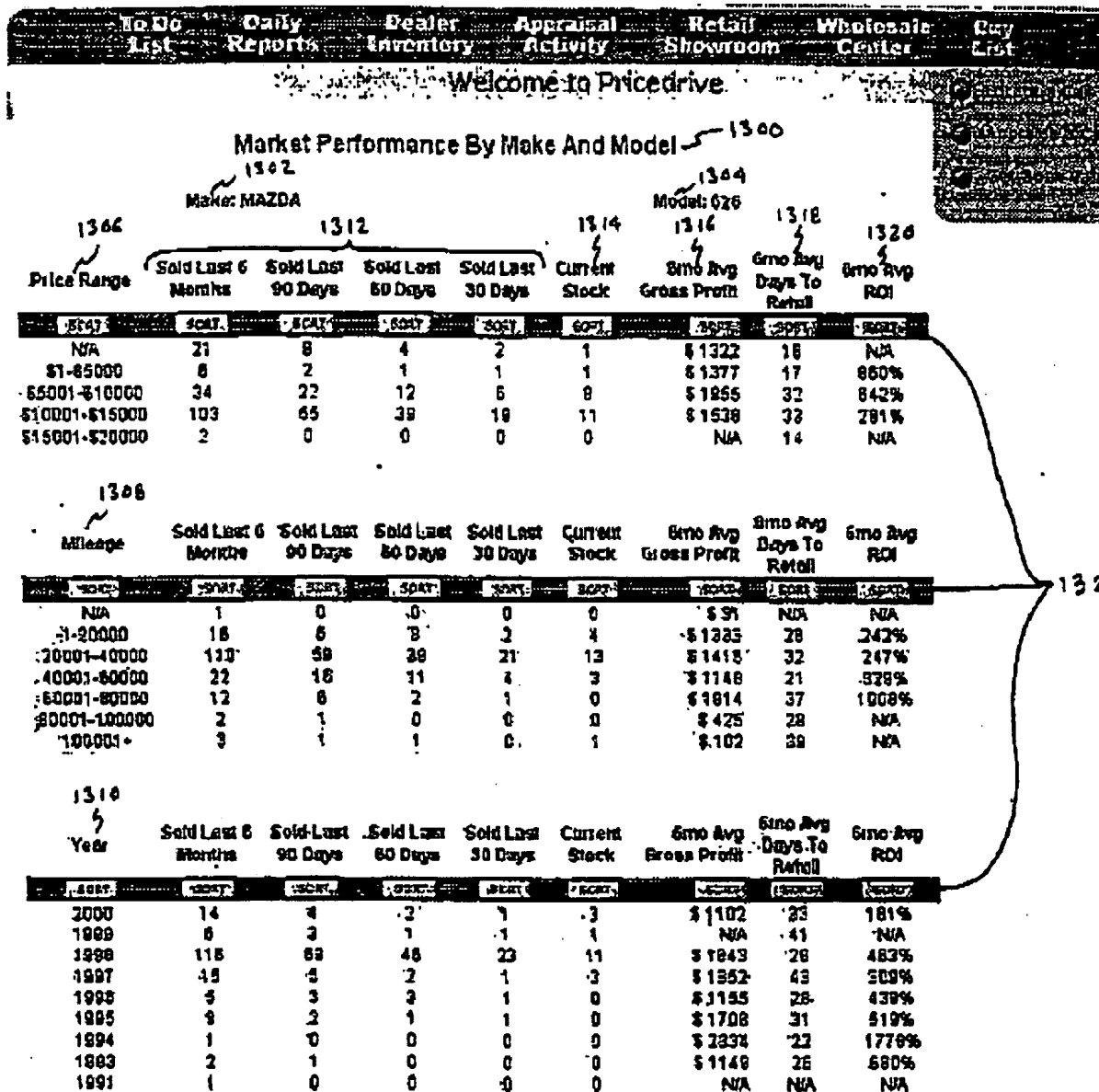


Figure 6: '051, Figure 13

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The screenshot shows a software interface with a menu bar at the top containing: To Do List, Daily Reports, Dealer Inventory, Approval Activity, Retail Showroom, Wholesale Center, and Buy List. Below the menu bar is a header area with 'Welcome to PriceDrive' and 'Buy List ~ 216'. A table titled 'Add Vehicle to Buy List' has columns: Make, Model, Year, Year, Miles, Miles, Notes, Hrs, and Alert. Handwritten annotations include '1702', '1704', '1706', '1708', '1710', '1712', '1714', '1716', '1718', and '1720'. The table contains two rows of data: 'AUDI 200 1993 1997 0 200000 View Delete' and 'BMW 325 1994 2000 0 200000 Post 2 Delete'.

Make	Model	Year	Year	Miles	Miles	Notes	Hrs	Alert
AUDI	200	1993	1997	0	200000	View		Delete
BMW	325	1994	2000	0	200000	Post	2	Delete

Figure 7: '051, Figure 17(a)

PriceDrive teaches aggregating both supply and demand information from a plurality of dealers (“Also, dealers managing systems (DMS) of competitive dealers can be networked while maintaining confidentiality of individual data of each dealer. The web site aggregates data from the DMS's within its own system and provides the aggregate data in various market reports or other views to members.”, Paragraph 0042) .

While determining if there is enough demand by comparing demand to some threshold (minimum number, required level, etc.) and then scheduling a market (auction, transaction, exchange, etc.) if and when the demand warrants it (critical mass) is old and very well known (e.g. determining if the number of potential buyers is equal to or greater than a minimum number). For Example markets (auctions, retailers, sellers, etc.) makers commonly either explicitly or implicitly know/understand the demand for

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their product and/or class of products and only schedule a market (sale, auction, bid, marketplace, exchange, trade, swap, etc.) if they know there is at least some minimum number of interested buyers, even if it is just one buyer. Otherwise scheduling a market when one knows there are no buyers for the product makes little sense.

PriceDrive does not expressly teach determining if sufficient demand exists for a micro market of a product class by *summing* the current individual dealer demand for each product class to determine *if the summed demand is greater than a threshold*; when the summed current individual dealer demand is greater than the threshold (i.e. over the level required/sufficient to make a micro market), the determining if (sufficient) supply exists within each product class to create a market by identifying the potential product class supply available from a plurality of suppliers; and when dealer product class demand and supplier product class supply are *greater than their respectively thresholds* creating a demand driven (micro) market by scheduling the market and notifying dealers and suppliers, who have product class demand/supply, the *time* for which a market has been scheduled as claimed.

Pallakoff teaches a system and method for creating demand-based micro markets comprising:

- determining if sufficient demand exists for a micro market of a product class by summing the current individual dealer demand for each product class to determine if the summed demand is greater than a threshold (Column 1, Lines 45-50; Column 3, Lines

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50-65; Column 4, Lines 1-7, 53-63; Column 5, Lines 28-38; Column 6, Lines 13-25, 50-65)Column 7, Lines 31-45);

- when the summed current individual dealer demand is greater than the threshold (i.e. over the level required/sufficient to make a micro market), the determining if (sufficient) supply exists within each product class to create a market by identifying the potential product class supply available from a plurality of suppliers (Column 3, Lines 49-68; Column 1, Lines 1-4, 30-60; Column 5, Lines 28-38; Column 11, Lines 25-37); and

- when dealer product class demand and supplier product class supply are *greater than their respectively thresholds* creating a demand driven (micro) market by scheduling the market (Column 5, Lines 28-38; Column 7, Lines 60-68; Column 8, Lines 1-20, 54-68) and notifying dealers and suppliers, who have product class demand/supply, the *time* for which a market has been scheduled (Column 5, Lines 3-20; Column 6, Lines 27-35; Column 8, Lines 54-68; Column 10, Lines 43-56; );

in an analogous art of scheduling (micro) markets for the purposes of creating demand-driven micro markets through the aggregation of demand (Column 1, Lines 45-49) as well as only creating markets where there is sufficient demand and supply (Column 7, Lines 60-68; Column 8, Lines 1-20).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for creating a demand-based market as taught by PriceDrive would have benefited from summing the current individual dealer demand for

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each product class to determine if the summed demand is greater than a threshold then determining if sufficient supply exists within each product class to create a market by identifying the potential product class supply available from a plurality of suppliers; and then when dealer product class demand and supplier product class supply are greater than their respectively thresholds creating a demand driven (micro) market by scheduling the market and notifying dealers and suppliers, who have product class demand/supply, the time for which a market has been scheduled in view of the teachings of Pallakoff; the resultant system/method only creating/scheduling demand-driven micro markets when there is sufficient demand and supply (Pallakoff: Column 7, Lines 60-68; Column 8, Lines 1-20).

Regarding Claims 3 and 12 PriceDrive teaches a system and method for creating demand-based markets further comprising creating a plurality of markets for the product classes (reference C: Page 6; reference D: Paragraph 1, Page 2; Paragraph 1, Page 5; reference '051: Paragraphs 0008, 0034, 0057, 0090).

Regarding Claims 4 and 13 PriceDrive teaches a system and method for creating demand-based markets further comprising offering units for each of the markets to dealers who have demand for the corresponding product class (reference C: Pages 4, 6; reference '051: Paragraphs 0007-0008, 0087).

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Regarding Claims 5 and 14 PriceDrive teaches a system and method for creating demand-based markets wherein the inventory profile is defined by each dealer (reference D: Paragraph 1, Page 5; reference '051: Paragraphs 0053, 0055, 0082, 0094; Figure 17a).

Regarding Claims 6 and 15 PriceDrive teaches a system and method for creating demand-based markets wherein the inventory profile is based on a sales history of each dealer (reference B: Paragraphs 1-2, Page 7; reference C: Page 4; reference '051: Claim 24; Paragraphs 0007, 0042-0043, 0048, 0082).

"24. A method of claim 22, wherein the number of current day supply of vehicles is a number of days it takes a dealership to sell its inventory based on at least one of the *dealership's sales history*, the *dealership's current inventory*, the *dealership's supply of vehicles*, or an amount of money that is tied up in the dealership's inventory.", emphasis added, Claim 24

Regarding Claims 7 and 19 PriceDrive teaches a system and method for creating demand-based markets wherein the collection of inventory information is performed on a periodic basis (reference B: Paragraphs 1-2, Page 7; reference C: Bullet 4, Page 6; reference '051: Paragraphs 0042-0043).

Regarding Claims 8 and 16 PriceDrive teaches a system and method for creating demand-based markets wherein suppliers include dealers who have products in inventory which the dealer has deemed for sale at wholesale (reference B: Paragraphs



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10-11, Page 7; reference C: Page 1; reference D: Paragraph 1, Page 3; Paragraph 1, Page 5; reference '051: Paragraphs 0051, 0053, 0056-0057; Figures 3a-3c).

Regarding Claims 9 and 17 PriceDrive teaches a system and method for creating demand-based markets wherein the products are used automobiles (reference A: Page 1; reference B: Page 1; reference C: Pages 1, 3-5; reference: '051: Abstract; Paragraphs 0007-0008).

It is noted that the intended use of marketing scheduling system and method for automobiles merely represents non-functional descriptive material wherein the systems/methods intended field of use is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the type of products demanded/supplied. Further, the structural elements remain the same regardless type of products demanded/supplied. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claims 10 and 19 PriceDrive teaches a system and method for creating demand-based markets wherein the suppliers include lease companies (reference: '051: Paragraph 0007).

It is noted that the one of the suppliers includes a lease company merely represents non-functional descriptive material wherein type of supplier is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the type of suppliers participating in the micro markets. Further, the structural elements remain the same regardless type of products demanded/supplied. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Green et al., U.S. Patent No. 6,041,310, teach a system and method for scheduling micro markets for automobiles/automobile dealers.

- Van Horn et al., U.S. Patent No. 6,604,089, teach an online system and method for creating demand-based/driven micro markets for a plurality of products/product classes by aggregating product demand.

- Ahluwalia, U.S. Patent No. 6,728,685, teach a system and method for scheduling demand-based micro-markets (purchases/dealer actions) for automobile dealers.

- Joseph, U.S. Patent No. 6,965,874, teach a system and method for scheduling demand-driven micro markets for automobiles between automobile dealers, who are represent both supply and demand, wherein dealer inventory supply and demand information is matched. Joseph further teaches that one of the suppliers is a lease company.

- Bowen, U.S. Patent Publication No. 2001/0047305, teach a system and method for scheduling micro-markets between buyers and sellers comprising collecting buyer demand and inventory information.

- Jones et al., U.S. Patent Publication No. 2002/0024537, teach a system and method for automobile dealership management comprising inventory management.

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- King et al., U.S. Patent Publication No. 2002/0091827, teach an online system and method for scheduling micro-markets wherein the system/method only schedules micro markets when sufficient demand and then supply are determined to be greater than their respective predetermined thresholds.

- Stibleman, U.S. Patent Publication No. 2002/0099618, teach a system and method for creating micro-markets for exchanging vehicle leases comprising dealer profiles and inventory information, user automobiles, notifying suppliers/dealers when a market has been scheduled, and lease companies.

- Williams et al., U.S. Patent Publication No. 2002/0198794, teach a system and method for determining optimal inventory levels/thresholds/mix for automobile dealers.

- Shishido, U.S. Patent Publication No. 2003/0171999, teach an online system and method for creating markets for used vehicles based on vehicle inventory information.

- Boyden et al., U.S. Patent Publication No. 2003/0036964, teach an online system and method for scheduling used automobile micro markets between dealers and suppliers/vendors based on dealer inventory information.

- Used Car Marketing Support System SMICATS (1997), teach a system and method for scheduling demand-driven micro markets for used cars comprising aggregated inventory information.

- Chatham, Buy-Side Market Realities (1999), teaches well known efforts to build buyer/demand-driven markets online.

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- BidVantage Teams With Servigistics to Provide Web-based Parts Procurement (2000), teaches a system and method for scheduling demand-driven micro markets for a plurality of product classes comprising determining if sufficient demand exists for a market and scheduling and notifying buyers/suppliers that a micro market has been scheduled.

- Cheryl, Used Cars (2000), teaches an online system and method for scheduling micro markets for used cars between automobile dealers comprising dealer inventory and profile information and inventory management.

- AutoTradeCenter Signs 3-Year Remarketing Agreement with American Honda Finance Corp. (2001), teaches an only system and method for inter-dealer purchasing of off lease vehicles (micro markets) comprising "daily inventory management."


- TrackerOnline.com (2000), teaches an online system and method for scheduling micro markets for used cars comprises dealer and supplier demand and inventory information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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